

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION, *et al.*

Chapter 11

Case No. 18-23538-rdd

Jointly Administered

Debtors.

**DECLARATION OF GEOFFREY J. LANGAN IN SUPPORT OF
OBJECTION OF JPMG MANASSAS MALL OWNER LLC AND
POUGHKEEPSIE GALLERIA LLC TO TRANSFORM HOLDCO LLC'S NOTICE
OF ASSUMPTION AND ASSIGNMENT OF ADDITIONAL DESIGNATABLE LEASES**

I, Geoffrey J. Langan, declare:

1. I am Real Estate Counsel at Pyramid Management Group, LLC ("Pyramid"), the managing agent for certain creditors of the above-captioned Debtors (the "Debtors" and each a "Debtor") with respect to the following premises (the "Premises"):

<u>Creditor</u>	<u>Shopping Center</u>	<u>Location</u>	<u>Store #</u>
JPMG Manassas Mall Owner LLC	Manassas Mall	Manassas, VA	2395
Poughkeepsie Galleria LLC	Poughkeepsie Galleria	Poughkeepsie, NY	1333

2. I have held the title of Real Estate Counsel at Pyramid since I joined in 2011. In this capacity, I am familiar with Pyramid's asset portfolio, documents, and business records, and I have been personally involved in various capacities in connection with portfolio leasing, development, and operations.

3. Prior to joining Pyramid, I was an associate at the law firm of Wolff, Goodrich & Goldman, LLP from 2007 to 2011, where I was responsible for representing insurance carriers and employers in various workers' compensation claims.

4. This declaration is being submitted in support of the concurrently filed (i) *Objection of JPMG Manassas Mall Owner LLC and Poughkeepsie Galleria LLC to Transform*

Holdco LLC's Notice of Assumption and Assignment of Additional Designatable Leases and (ii) *Supplemental Cure Objection of JPMG Manassas Mall Owner LLC and Poughkeepsie Galleria LLC to Transform Holdco LLC's Notice of Assumption and Assignment of Additional Designatable Leases* with respect to the proposed assumption and assignment of various agreements between JPMG Manassas Mall Owner LLC and Poughkeepsie Galleria LLC (each a "Creditor"; collectively, the "Creditors"), on the one hand, and a Debtor, Sears, Roebuck and Co. ("Sears"), on the other hand, to Transform Operating Stores LLC, which, upon information and belief, is an affiliate of Transform Holdco LLC (the "Buyer"), and affiliate of ESL Investments, Inc.

5. As a result of my position, I (and those working under my direction) have access to, and am one of the custodians of, records of Pyramid as those books, records, and files relate to the use and occupancy of the Premises. If called upon to testify in this proceeding as to the matters set forth in this declaration, I could and would competently testify thereto since the facts set forth herein are personally known to me to be true, except as to matters stated to be upon information and belief, which matters I believe to be true.

6. The Creditors and Sears are parties to various agreements, including an unexpired lease of nonresidential real property, an allocable share agreement, a maintenance agreement, and reciprocal easement agreements (the "Agreements")¹ with respect to the Premises.

7. Each of the Premises is a typical shopping center.

8. The Manassas Mall is a climate controlled indoor mall shopping center consisting of approximately 932,000 square feet of retail floor space located at 8300 Sudley Road, Manassas, Virginia. The shopping center is occupied primarily by tenants engaged in the commercial retail distribution of goods, has shared parking areas, common area maintenance,

¹ Each of the Agreements are available upon request to Creditors' counsel.

common hours, and includes contiguous stores with a strategic tenant mix. Purposefully developed as a shopping center, Manassas Mall is anchored by Sears, Macy's, Walmart, and At Home, and has spaces for over 80 retail stores, restaurants, and services, including American Eagle Outfitters, Bath & Body Works, The Children's Place, Foot Locker, Forever 21 Red, H&M, Kay Jewelers, and McDonald's. A copy of the mall map from the Manassas Mall website, as well as a more detailed site plan, are attached hereto as Exhibit 1 and incorporated herein by reference. Additional information related to the Manassas Mall is available online at <https://www.manassasmall.com>.

9. The Manassas Mall shopping center is governed, in part, by a reciprocal easement agreement (the "Manassas REA"), portions of which are attached hereto as Exhibit 2. Indicia of a shopping center in the REA include: (i) that it was developed purposefully as a shopping center²; (ii) joint approval by anchor tenants of a site plan³; (iii) the grant of perpetual easements with respect to each portion of the shopping center⁴; (iv) common maintenance⁵; (v) common parking with a required parking ratio⁶; and (vi) rules and regulations as to the common area⁷, among others.

10. The Poughkeepsie Galleria is a climate controlled indoor mall shopping center consisting of approximately 1.2 million square feet of retail floor space located at 2001 South Road, Poughkeepsie, New York 12601. The shopping center is occupied primarily by tenants

² Manassas REA, p. 2.

³ Manassas REA, p. 3.

⁴ Manassas REA, p. 13.

⁵ Manassas REA, p. 7.

⁶ Manassas REA, p. 14.

⁷ Manassas REA, p. 16.

engaged in the commercial retail distribution of goods, has shared parking areas, common area maintenance, common hours, and includes contiguous stores with a strategic tenant mix. Purposefully developed as a shopping center, Poughkeepsie Galleria is anchored by Sears, Best Buy, Dick's Sporting Goods, JCPenney, and Target, and has spaces for over 120 retail stores, restaurants, and services, including Aeropostale, American Eagle Outfitters, Banana Republic, Bath & Body Works, The Children's Place, DSW, Forever 21, Loft, Old Navy, Ruby Tuesday, Taco Bell, and Zales. A copy of the mall map from the Poughkeepsie Galleria website, as well as a more detailed site plan, are attached hereto as Exhibit 3 and incorporated herein by reference. Additional information related to the Poughkeepsie Galleria is available online at <https://www.poughkeepsiegalleriamall.com>.

11. The Poughkeepsie Galleria shopping center is governed, in part, by a construction, operation, and reciprocal easement agreement (the "Poughkeepsie COREA"), portions of which are attached hereto as Exhibit 4. Indicia of a shopping center in the Poughkeepsie COREA include: (i) that it was developed purposefully as a shopping center⁸; (ii) joint approval by anchor tenants of a site plan⁹; (iii) the grant of perpetual easements with respect to each portion of the shopping center¹⁰; (iv) common maintenance¹¹; (v) common parking with a required parking ratio¹²; and (vi) rules and regulations as to the common area¹³, among others.

⁸ Poughkeepsie COREA, p. 1.

⁹ Poughkeepsie COREA, p. 70.

¹⁰ Poughkeepsie COREA, pp. 29-30.

¹¹ Poughkeepsie COREA, p. 5.

¹² Poughkeepsie COREA, pp. 92, 96.

¹³ Poughkeepsie COREA, pp. 83-91.

12. Some of the Agreements contain provisions that prohibit, condition, or restrict the use of the Premises. By way of example, the Manassas Mall premises may only be used for the retail sale of goods and services and operations incidental thereto, but prohibits its use as a second hand store, surplus store, supermarket, theatre or auditorium, drug store, junior department store, 5 or 10 cent store, or dollar store.¹⁴ The relevant provisions in the Manassas REA are included in Section 9 as follows:

SECTION 9. (a) [Sears] and Developer hereby agree that during the term of this Agreement no part of the Shopping Center shall be used for any purpose other than the retail sale of goods and services and operations incidental thereto, (including the operation of auto service facilities on Parcels A and 15), the conduct of other businesses and professions as from time to time are customarily carried on in regional shopping centers and for parking and other services in connection therewith.

(b) [Sears] and Developer further agree that during the terms of this Agreement no part of the Shopping Center premises shall be used for the operation of a "second hand store" or an Army, Navy or Government "surplus" store.

(c) [Sears] and Developer agree that no portion of the Shopping Center owned by [Sears] or Developer or from time to time by any other owner shall be used for any purpose in violation of any law ordinance or any regulation of any governmental authority or in any manner that will constitute a nuisance or unreasonable annoyance to owners or occupants of adjoining neighboring property or for any extra hazardous purpose which would suspend, void or make inoperative any policy or policies of insurance at any time carried on any improvements in the Shopping Center.

(d) [Sears] hereby agrees that during the term of this Agreement no part of Parcel A shall be used for the operation of: (i) a supermarket food store, but nothing contained in this clause (i) shall be deemed to prohibit the operation of a restaurant or snack bar on Parcel A or the operation of a candy counter or gourmet shop in the retail department store on Parcel A or the catalog sale of food stuffs through the catalog desk in the retail department store on Parcel A; (ii) a theatre or auditorium for public shows, but nothing contained in this clause (ii) shall be deemed to prohibit the

¹⁴ Manassas REA, pp. 23-24.

operation in the retail department store on Parcel A of fashion shows and other non-profit entertainment provided no admission is charged therefor, except for fashion shows; and (iii) the sale of prescription drugs which must be made pursuant to municipal, state or federal law by a licensed pharmacist.

(e) [Sears] hereby agrees that during the term of this Agreement [Sears] will not lease, sublease, license or otherwise permit any occupant of a portion of Parcel A except [Sears] to use the premises demised or occupied by such entity as a junior department store, 5 and 10 cent store, 5 cent to \$1.00 store, 25 cent to \$1.00 store or variety store (whether limited priced or not).

Manassas REA, pp. 23-24.

13. As of the filing of this declaration, the following amounts are owed by Sears to each of the Creditors under the terms of the applicable Agreements: (i) \$17,466.68 to JPMG Manassas Mall Owner LLC and (ii) \$72,416.21 to Poughkeepsie Galleria LLC. Attached as Exhibit 5 are summaries reflecting these outstanding amounts. The amounts due under the Agreements constantly vary, including when expenses accrue but are not yet billed.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
and correct.

Dated: May 2, 2019
Syracuse, New York

A handwritten signature in black ink, appearing to read "Geoffrey J. Langan", is written over a horizontal line.

GEOFFREY J. LANGAN